BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	**CC Docket No. 96-262**
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
Transport Rate Structure and Pricing	)	**CC Docket No. 91-213**
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	**CC Docket No. 96-263**

To: The Commission

INITIAL COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

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EXECUTIVE SUMMARY

API urges the Commission to adopt the prescriptive approach to access charge reform, with access rates set on the basis of forward-looking economic costs. In the reformed access environment, regulatory relief for incumbent LECs is appropriate only in the presence of actual facilities-based competition for exchange access services. Deregulation must be accompanied by requisite public interest findings and safeguards to ensure that the incumbent does not abuse its regulatory freedom.

API strongly supports the goal of access services priced at economically efficient rates. The market-based approach to access reform, however, will be unable to achieve such a result because that approach is fundamentally flawed. It proposes to rely on competitive forces to set rates in what is currently a monopoly market. It proposes to rely on competition in the local exchange market to drive rates towards cost in the distinct exchange access market. And it proposes to grant regulatory flexibility to ILECs absent public interest findings and safeguards comparable to those that the 1996 Act requires. Given these flaws, it is nothing less than regulatory abdication to adopt a market-based approach.

Only actual facilities-based competition can exert downward pressure on ILEC access rates. Consequently, until that competition is established, the Commission must continue to maintain its regulatory oversight role. It must prescribe access rates and reject as premature any regulatory flexibility for ILEC access services. As in prior Commission proceedings involving regulatory flexibility, market share measurements must be included as one of several factors to be

considered when assessing the state of competition.

Because it will take time to determine rates under the prescriptive approach to access reform, the Commission should take immediate action to reduce rates that have been grossly inflated for years. Among other things, it should reinitialize price cap indices and adopt an X-Factor increase in the range of 10 percent.

In its efforts to prescribe economically-efficient rates, the Commission should be sensitive to the market distortions that result from over-allocations of common costs to access services. Moreover, it should refrain from shifting the cost of reform to end-users, including Internet access providers. Specifically, SLC increases should not be implemented to offset revenue impacts associated with the elimination of usage-sensitive CCL charges. The record lacks any basis upon which to determine that SLCs, which are premised on outdated embedded costs and inflated by jurisdictional misallocations, fail to recover the per-line forward-looking economic costs of the local loop that are properly assignable to the interstate jurisdiction. In the absence of such a cost showing, (1) SLCs should be imposed on a "per-facility" basis only; and (2) ILECs should not be permitted to increase the SLC cap applicable to multi-line business lines or eliminate the SLC on "second" residential lines.

To the extent transition mechanisms are deemed necessary, they should be narrowly tailored and their term explicitly limited. These mechanisms should allow ILECs to recover only those revenue losses attributable to direct regulatory action. ILECs should not be rewarded for their failure to respond to the simulated competitive forces provided by price cap regulation. "Make-whole" transitional mechanisms that permit ILECs to close the gap between embedded

and forward-looking costs undermine the stated purposes of access charge reform and are inconsistent with the operation of a competitive market.

Despite its concerns regarding "egregiously high" rates for terminating access, the Commission need not take the drastic step of regulating terminating access rates of CLECs. If marketplace forces work, then prescribed ILEC rates should exert downward pressure on CLEC rates sufficient to drive those rates down to levels the Commission deems reasonable.

The Commission, however, should eliminate the Enhanced Services Provider (ESP) exemption and apply reformed access charges to all access users. In a reformed system, subsidy-free access rates will not impose the drag on investment and innovation that current rates impose. Moreover, eliminating the exemption should further encourage the development of competition, since ESPs, and Internet access providers in particular, may be encouraged to seek alternatives to ILEC access.

The Commission recognizes that, ultimately, rates for local and long-distance transport and termination should converge, since the services are functionally identical. Given this recognition, the most appropriate response to an access charge system riddled with inefficiencies and distortions may simply be to dismantle it, particularly since the regime has served its purposes of encouraging interexchange competition and has been supplanted with respect to funding universal service. In lieu of this response, however, the Commission should prescribe economically-efficient rates for ILEC access services for the benefit of all telecommunications users.

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INITIAL COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute (API), by its undersigned attorneys, hereby respectfully submits these comments in response to the Notice of Proposed Rulemaking released by the Federal Communications Commission (the Commission) on December 24, 1996 in the above-captioned proceeding.[1/] API urges the Commission to

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1/ Notice of Proposed Rulemaking and Notice of Inquiry, FCC 96-488 (adopted (continued...)

reject a market-based approach to access charge reform and, instead, prescribe rates based on forward-looking economic costs that incumbent local exchange carriers (ILECs or incumbent LECs) charge for interstate switched access services.

I. PRELIMINARY STATEMENT

API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products, and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

II. A MARKET-BASED APPROACH FAILS TO ENSURE JUST AND REASONABLE RATES

Responsive to: Section V: Market-Based Approach to Access Reform

A. The Market-Based Approach Is Fundamentally Flawed

A "market-based" approach for access charge reform is not a viable policy option. At this time, such an approach would constitute an abandonment of the Commission's

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[1/](...continued)
December 23, 1996) ("Notice").

responsibility under Section 202 to ensure that incumbent LECs charge just and reasonable rates for interstate switched access services.

API supports the institution of this proceeding which looks towards the comprehensive reform of interstate access charges regulation. As the Commission acknowledges, the current system is riddled with inefficiencies and market distortions, which competitive pressures isolate and highlight.[2/] The rules governing this regime are "fundamentally inconsistent with the competitive market conditions that the 1996 Act attempts to create."[3/] Over the last two years, the Commission's inaction in implementing more realistic rate levels and productivity factors under price caps has imposed undue costs on all telecommunications users. This inaction has exacerbated the problems resulting from interstate access rates that are inflated both by implicit and explicit subsidy elements, which the 1996 Act attempts to rectify with its requirement for "specific, predictable" universal service funding mechanisms. Section 254(b)(5).

Against this backdrop, the Commission identifies three goals of access charge reform: (1) addressing claims that existing access charge levels are excessive; (2) establishing a transition to access charges that more closely reflect economic costs; and (3) deregulating incumbent LEC exchange access services as competition develops in

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2/ Notice at ¶ 7.

3/ Notice at ¶ 6.

the local exchange and exchange access market.[4/] To achieve these goals, a "market-based approach" is proposed, under which "potential and actual competition from new facilities-based providers and entrants purchasing unbundled elements [will] drive prices for interstate access to cost."[5/] Specifically, the Commission would reduce or eliminate, "in phases tied to the potential for and growth of competition, access charge requirements that constrain rate structures and price levels."[6/] The Commission apparently believes that these potential and nascent marketplace forces will "provide the discipline on incumbent LEC access prices that our rules are currently needed to apply," dispensing with the need for the Commission to set rates.[7/]

This approach is fundamentally flawed.

First, it proposes to rely on competitive forces to set rates for what is, today, a monopoly bottleneck.[8/] Second, it proposes to rely solely on the prospect of competition

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[4/] Notice at ¶ 14. As explained in greater detail below, the Commission's use of the singular "market" in its third goal is inconsistent with its recognition, in its other proceedings, including its *Interconnection* proceeding, that local exchange and exchange access constitute distinct "markets."

[5/] *Id.*

[6/] Notice at ¶ 218.

[7/] Notice at ¶ 14. Interestingly, while the Commission has perceived a need to protect other infant industries, including information services, it apparently perceives no such need with respect to exchange access competition. Instead, the market-based approach adopts a diametrically-opposed position, by relaxing regulatory constraints before competition has even emerged.

[8/] Inexplicably, the Commission's proposal draws no distinction between originating (continued...)

in one ostensibly open market, the local exchange market, to deregulate ILEC services in the distinct exchange access market. Further obscured by the proposal to eliminate the use of market share measurements when assessing the competitiveness of various access services, this unsupportable assumption does not and cannot gloss over the fact that ILECs do not face competition for their exchange access services sufficient to warrant regulatory relief.

Third, the tests for ascending levels of regulatory flexibility, culminating in deregulation of ILEC exchange access services, are significantly less rigorous than that required by Congress with respect to regulatory forbearance or Bell Operating Company (BOC) entry into in-region interLATA markets.[9/] The proposed triggers for exchange access flexibility and deregulation, for example, lack any requisite findings regarding ILEC compliance with safeguards or that the proposed relief is "consistent with the public interest."[10/]

[8/](...continued)
and terminating access, even though the Commission itself notes that "it appears that *even with a competitive presence in the market, terminating access may remain a bottleneck* controlled by whichever LEC provides access for a particular customer. As such, the presence of unbundled network elements or facilities-based competition may not affect terminating access charges." Notice at ¶ 271 (emphasis added).

[9/] Section 271(d)(3).

[10/] *See*, Section 10(a)(3); *see also* Section 271(d)(3)(C).

B. Premature Reliance on Competitive Forces Subverts the Goals of the 1996 Act

The 1996 Act "fundamentally changes telecommunications regulation."[11/] In the altered regulatory landscape, competitive entry is encouraged, not prohibited, and "historical regulatory distinctions are supplanted by competitive forces" as warranted.[12/] The interstate access charge rules reflect a reality in which the incumbent LEC was the monopoly provider of local exchange and exchange access services.[13/] These rules must now be revisited to ensure their consistency with the goals and policies of the 1996 Act.

Superficially, the market-based approach appears to comply with those goals because it represents an effort to supplant "historical regulatory distinctions" with "competitive forces." Closer examination reveals that rather than comply with those goals, a market-based approach subverts them because competitive forces do not exist in the exchange access market. If they did, the triggers for regulatory flexibility for ILEC exchange access services would constitute more than "potential" competition or "an actual competitive presence." These triggers, moreover, would be confined to

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11/ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order ¶ 1 (rel. Aug. 8, 1996), 61 Fed. Reg. 45476 (Aug. 29, 1996) (*Interconnection Order*), Order on Reconsideration, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) (*Interconnection Reconsideration Order*).

12/ *Interconnection Order* at ¶¶ 1-2.

13/ Notice at ¶ 6.

competitive developments in the exchange access market only and not encompass competition in the local exchange.

Further undermining the validity of a market-based approach is the Commission's own decisions restricting competition in the exchange access market. Specifically, both potential and actual competition in the exchange access market by resellers and purchasers of unbundled network elements is precluded. According to the Commission, the Section 251 rights of competing carriers do not extend to the resale of switched access services or to the purchase of unbundled switching for the purposes of providing "solely interexchange service or solely access service to an interexchange carrier."[14/]

Having recently reaffirmed regulatory barriers to entry in the exchange access market, it is astounding that the Commission proposes a two-phased "market-based" approach to access charge reform that replaces regulatory oversight of the incumbent LEC's exchange access rates with "marketplace forces." Under that approach, the incumbent LECs would be entitled to obtain significant regulatory flexibility for their protected exchange access services upon the showing of "potential" competition, with even greater flexibility permissible upon the showing of a single "actual competitive presence" in the separate local exchange market. In a departure from prior Commission policy, "substantially competitive" services would be deregulated.

Under the market-based approach, exchange access would remain a protected "stronghold" in which ILECs may operate with increasing levels of regulatory flexibility,

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14/ *Interconnection Reconsideration Order* at ¶ 13.

culminating in deregulation for specific services. Unlike the local exchange market, where rates are governed by statutory criteria and subject to state review, rates for exchange access services would be set by the incumbent itself.

Premature reliance on "competitive forces" constitutes an abdication to the regulated entity that subverts the pro-competitive, deregulatory goals of the 1996 Act. Because marketplace forces strong enough to drive access prices to forward-looking economic cost do not exist, and are unlikely to exist in the immediate future, carriers purchasing exchange access will have no recourse but to purchase that access at rates that will remain grossly inflated. "Just and reasonable" rates will remain an elusive goal unless and until the Commission exerts its regulatory authority and prescribes rates.

C. Only Actual Facilities-Based Competition Can Generate the Requisite Marketplace Forces to Discipline Rates

Marketplace forces derive from competitive alternatives, a point the Commission has long recognized. "A goal of our policies is to promote economic efficiency, which includes regulating prices so that they emulate the economic performance of competitive markets as closely as possible *until actual competition arrives.*"[15/] Alternatives to an ILEC's interstate switched access services do not exist now, nor will they exist in the

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15/ *Price Cap Performance Review for Local Exchange Carriers*, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124 and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858, ¶ 18 (1995) (*Price Cap Second FNPRM*) (emphasis added).

immediate future. It strains credulity to assert that competitive pressures from potential competitors or purchasers of unbundled network elements are adequate to generate marketplace forces strong enough to drive access prices towards forward-looking economic cost. While "actual" competition *by facilities-based providers* could provide such discipline, the requisite level of competitive pressure is a goal, not a reality.

The optimistic scenario envisioned under a market-based approach, moreover, ignores the vociferous opposition the LEC industry has raised to forward-looking economic costs. It is unreasonable to believe that "competitive pressures" that have yet to materialize are or will be sufficient to drive rates to a level the LEC industry contends is confiscatory.[16/]

It is unclear how "potential" competitors are capable of providing the marketplace discipline necessary to drive rates to forward-looking economic cost. In fact, until a customer can actually obtain service from an alternate facilities-based provider, the entrenched provider has little if any incentive to reduce its rates or improve service. At the very most, the monopoly provider may engage in defensive posturing by preparing for rate reductions when a competitive presence appears imminent.

Until at least one facilities-based competitor is established, an incumbent freed of regulatory restraints may respond to potential competitive pressures not by reducing rates to forward-looking economic costs but, instead, by merely dropping rates to some level that undercuts the potential competitor's prices. And rather than reduce rates for all

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16/ *See* Notice at ¶ 41.

customers of a specific access service, the incumbent need only engage in targeted rate reductions: identifying the specific customers or customer classes that it wishes to retain and reducing rates accordingly. The incumbent need not institute any rate reductions with respect to services which remain insulated from competitive pressures.[17/] These types of responses to potential competition strongly suggest that an ILEC "disciplined" not by prescriptive regulation but by marketplace forces would tend to engage in predatory and preferential pricing - practices that the Commission is charged with preventing under Section 201 and 202.[18/]

Nor can purchasers of unbundled network elements provide the requisite marketplace discipline. These entrants do not offer a true competitive alternative to the incumbent LEC. The ILEC continues to control necessary facilities and to generate revenue from the competitor's provision of services. Additionally, whatever limited ability entrants may have had to offer a competitive alternative to ILEC access services was squelched when the Commission determined that carriers may not use unbundled switching to substitute for switched access services:

> We thus make clear that, as a practical matter, a carrier that purchases an unbundled switching element will not be able

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17/ In Paragraph 168, the Commission appears to acknowledge and endorse these prospects, despite their anti-competitive and discriminatory implications.

18/ The prospect of discriminatory and anti-competitive pricing may be among the scenarios encompassed in paragraph 201, in which the Commission requests comment on reforms "if the development of competition comes at significantly different rates for different switched access services in different areas." Notice at ¶ 201. *See also* Notice at ¶ 208.

> to provide solely interexchange service or solely access service to an interexchange carrier. A requesting carrier that purchases an unbundled local switching element for an end user may not use that switching element to provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service.[19/]

Given these restrictions, it is unlikely that a competing provider of exchange access services entering a market could usurp significant LEC business by leasing unbundled network elements "to target selectively the incumbent LEC's high-volume end users with efficiently priced access service offerings."[20/] Under the Commission's *Interconnection Order,* end-users must agree to obtain local service from the competing provider before that provider may offer "efficiently priced access." Consequently, there may "be limits on the extent to which access charges can be replaced by unbundled elements in either the short or long-term, because an IXC may have to take access service for those end-user customers for which it does not provide local service."[21/] Until the resolution of key issues, including long-term number portability, dialing parity, and other "operational issues [which] may be among the most difficult for the parties to resolve,"

19/ *Interconnection Reconsideration Order* at ¶ 13. Interestingly, the Commission acknowledges the "absence of a legal requirement under the 1996 Act that a requesting carrier provide local exchange service to an end user in order to purchase unbundled network elements and use them as a substitute for access service." Notice at ¶ 208. Nonetheless, nothing in the Notice, including the tentative conclusions in Paragraph 54, eliminates the prohibitions established in the *Interconnection Reconsideration Order.*

20/ Notice at ¶ 8.

21/ Notice at ¶ 48.

end-users are likely to be reluctant to switch their local service, particularly if the change incurs substantial costs.[22/]

Of the forces identified, then, only *actual* competition from facilities-based providers provides a competitive alternative that may impose sufficient marketplace discipline to drive prices towards forward-looking economic cost. By any measure, however, such actual competition is neither present nor foreseeable in the immediate future.

D. Bottleneck Strongholds Will Be Difficult To Crack Even with Actual Facilities-Based Competition

Significantly, the Commission itself recently described the local exchange and exchange access markets as "one of the last monopoly bottleneck strongholds in telecommunications."[23/] Section 251 interconnection agreements are intended to help new entrants to compete. Under Section 251, competing carriers may obtain interconnection agreements that allow them to use one or more entry strategies to crack the ILECs' "monopoly bottleneck stronghold," particularly in the local market. These multiple entry strategies are important because "many new entrants will not have fully constructed their local networks when they begin to offer service."[24/] Many entrants can

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22/ *Interconnection Order* at ¶ 4.

23/ *Interconnection Order* at ¶ 14.

24/ *Interconnection Order* at ¶ 14.

be expected to follow the example of MCI and Sprint, relying initially on resale of an incumbent's services and gradually deploying their own facilities.

Despite the statutory interconnection rights of market entrants, the anticipated cracks in the local market will be slow to emerge. While some of that delay may be attributable to judicial review, there are numerous other contributing factors. For example, in many states the costing and pricing of arbitrated interconnection rates have yet to be finalized. Dialing parity remains a contested issue. Number portability implementation deadlines in the nation's 100 largest metropolitan deadlines - deadlines which are seen, increasingly, as optimistic - extend through December, 1998. In many areas, legal battles loom as municipalities erect effective regulatory barriers to entry by imposing unreasonable franchise terms and limiting access to public rights-of-way. And the longer the duration of any transition mechanisms the Commission may adopt in its universal service and access charge rulemakings, the longer competing carriers will operate at a competitive disadvantage, paying excessive rates to their would-be competitors.

Until these and other issues are resolved, incumbent LECs will continue to maintain their monopoly bottleneck strongholds. The ILECs' share of the local market, which the Commission placed at 99.7 percent (as measured by revenues) in its *Interconnection NPRM* will continue to remain at stratospheric levels.[25/] With no

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[25/] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (rel.
(continued...)

meaningful competition in sight, it is unreasonable and unrealistic to believe that absent regulatory prescription ILECs will move their interstate access prices towards forward-looking economic costs.

E. Grants Of Regulatory Relief Must Encompass Only Those Markets In Which The ILEC Faces Actual Facilities-Based Competition

The Commission draws the legal conclusion that transport and termination of local traffic are governed by Section 251 and 252, while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act.[26/] In discussing regulatory relief for ILEC exchange access services, however, the Commission's Notice repeatedly blurs the distinctions between the local exchange and the exchange access markets. If the Commission is to be true to its legal conclusion regarding the distinctions between local and long-distance traffic, it must then distinguish between local and exchange access markets for the purposes of regulatory relief, as well.[27/]

In Phase One, the Commission proposes to grant ILECs significant regulatory flexibility when the ILEC can demonstrate "that its local market has been opened to competition and potential rivals are able to enter through any of the three avenues

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[25/](...continued)
Apr. 19, 1996), 61 Fed.Reg. 18311, ¶ 6 (Apr. 25, 1996) (*Interconnection NPRM*).

[26/] Notice at ¶ 8.

[27/] Notice at ¶ 9. Moreover, given its recognition that terminating access is likely to remain a monopoly bottleneck, the Commission must distinguish between originating and terminating access as well.

mandated by the 1996 Act - interconnection, unbundled network elements, and resale."[28/] Elsewhere, however, the Commission offers a slightly different test, stating that relief may be obtained if the ILEC demonstrates that "it faces potential competition for interstate access services in specific geographic areas."[29/] At times the Notice fails to offer any clarification, as with the statement that Phase One would be achieved when an incumbent LEC "has opened its network by removing the most immediate barriers to competitive entry."[30/] The various factors identified as relevant to a Phase One trigger, however, such as cost-based unbundled network elements and wholesale rates for ILEC retail services, demonstrate that the potential competitive entry envisioned is primarily entry into the local exchange market, not the exchange access market.

In Phase Two, the Commission proposes to grant ILECs even greater regulatory flexibility for exchange access services when "an actual competitive presence has developed in the marketplace."[31/] At one point that marketplace is identified as the "local exchange marketplace" although elsewhere the Commission refers to "an actual competitive presence for an exchange access service in a relevant geographic area."[32/]

28/ Notice at ¶ 15.

29/ Notice at ¶ 168.

30/ Notice at ¶ 163.

31/ Notice at ¶ 164.

32/ Notice at ¶¶ 15, 201.

As discussed above, *potential* competition creates no basis for immediate regulatory relief. The Commission has previously recognized this, as when it proposed to condition "certain relaxed regulatory treatment on reductions in entry barriers or demonstrations of actual competition for interstate access services."[33/] Even with *actual* competition in place, it will take substantial time before competitive forces break open a local bottleneck, a point the Commission recognized in its *Interconnection Order:* "[c]ompetition in local exchange and exchange access markets is desirable . . . because competition *eventually* will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."[34/]

Neither resale nor use of an ILEC's unbundled network elements constitute the type of competition that warrants increased regulatory flexibility. Instead, only *actual facilities-based competition* should be considered, as it is the sole entry strategy that operates largely independent of the incumbent. With the introduction and maintenance of robust, vigorous facilities-based competition, customers, resellers, and purchasers of unbundled network elements begin to enjoy alternatives to the incumbent provider. Only when those alternatives have taken root is the incumbent's monopoly hold broken; only then is regulatory relaxation appropriate.

33/ *Price Cap Second FNPRM* at ¶ 862.

34/ *Interconnection Order* at ¶ 4 (emphasis added). As discussed above, the Commission recognizes that even with an actual competitive presence, terminating access may remain a bottleneck service. Notice at ¶ 271.

Neither resellers nor purchasers of unbundled network elements can break this monopoly hold. Though deemed carriers, both function as a type of customer, dependent on the incumbent supplier. The ILEC's role as provider of the unbundled elements ensures that the ILEC maintains a significant presence in the delivery of the service and receives compensation for the competitor's provision of that service. Given this continuing ILEC involvement, the provision of unbundled network elements is closer to resale than facilities-based competition. And, given their continuing dependence on the ILEC, neither resellers nor purchasers of unbundled network are positioned to safeguard consumers against monopoly abuses.

Just as importantly, neither resellers nor purchasers of unbundled network elements are in a position to mount a competitive challenge to the ILEC's provision of exchange access services since the *Interconnection Order* precludes these carriers from competing, in whole or in part, in the exchange access market. As noted above, purchasers of unbundled switching are precluded from using that unbundled element as a substitute for the ILEC's switched access services.[35/] Likewise, resellers are precluded from reselling exchange access.[36/] Only facilities-based carriers operate free of these regulatory constraints.

It would be premature to grant regulatory flexibility while there is only the prospect of competition and while, consequently, the ILEC still enjoys monopoly control

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35/ *Interconnection Reconsideration Order* at ¶ 13.

36/ *Interconnection Order* at ¶ 980.

of bottleneck local facilities. Thus, at a minimum and under both the market-based and prescriptive approaches, before the relief contemplated in Phase One may be granted, the ILEC must face at least an actual facilities-based competitive presence in the exchange access market.[37/]

The relief contemplated in Phase Two should be considered only when the ILEC faces the "substantial competition" currently envisioned as a prerequisite for deregulation. The presence of a single *significant and well-established* "actual competitive presence" creates a duopoly, not competition, much as Bell Atlantic has argued in its antitrust action against Lucent.[38/] As such, it does not create the type of competitive environment that warrants even further regulatory relaxation.

Until facilities-based carriers achieve a presence in the exchange access market, neither resellers nor purchasers of unbundled network elements will have any alternative to the ILEC's exchange access services. Despite that presence, the ILEC will continue to maintain a stronghold until facilities-based carriers achieve a significant presence and are positioned to offer real competitive alternatives. Until these alternatives exist, the ILEC should remain subject to regulatory safeguards that protect against monopoly abuse.

[37/] Additional safeguards may be necessary, however, to ensure that the ILEC does not abuse this flexibility. Preferential rates should not be extended to affiliates, for example, under the guise of a volume and/or term discounts.

[38/] A copy of this document, which was posted on Bell Atlantic's Internet home page, is attached hereto. *See* ¶ 20-21 of that document.